

September 13, 2005

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

**Standards for Certification; Height Limitations; Municipal Reserve Areas;
Landfills; Surface Water Runoff; Pilot Program for Alternate Design
Wastewater Treatment Systems**

**Proposed Amendments: N.J.A.C. 7:50-3.39, 4.2, 5.4, 5.27, 5.28, 5.32, 5.62,
5.63, 6.75, 6.84 and 10.22**

Authorized By:

_____/____/____
New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Authority: N.J.S.A. 13:18A-6j

Calendar Reference: See Summary below for explanation of exception to calendar
requirement

Proposal Number:

A **public hearing** concerning this proposal will be held on:

December 7, 2005 at 7:00 P.M.
Southampton Township Municipal Building
Route 206 and Retreat Road
Southampton, New Jersey

Submit written comments by regular mail, facsimile or e-mail by January 6,
2006 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064
Facsimile: (609)894-7330
E-mail: planning@njpines.state.nj.us

The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend subchapters 3, Certification of County, Municipal and Federal Installation Plans, 4, Development Review, 5, Minimum Standards for Land Uses and Intensities, 6, Management Programs and Minimum Standards, and 10, Pilot Programs, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in June of 2005 through a set of amendments which redesignated the Oyster Creek and Waretown Creek watersheds in Ocean and Lacey Townships from a Pinelands Rural Development Area to a Pinelands Forest Area, adjusted Pinelands management area boundaries to reflect a settlement agreement involving lands in Manchester Township, updated the threatened and endangered plant list contained in the CMP and established a new pilot program for consumer electronics recycling facilities (see 37 N.J.R. 2013(b)).

One of the amendments now being proposed is an outgrowth of the Commission's plan review process. The Pinelands Protection Act requires that the CMP be periodically revised and updated. The CMP further specifies that a comprehensive review must be undertaken within five years of completing the last such review. Prior reviews of the CMP were completed in 1986 and 1996.

The Commission began the third review of the CMP by holding a special meeting to develop a framework for the review. At that meeting, the Commission

identified two priority topics to be addressed during the review: Permanent Land Protection and Regional Growth and Development. In an effort to obtain public input on these topics, as well as other issues, the Commission then held four public forums: Practitioner Issues (December 2001); Permanent Land Protection (March 2002); Regional Growth and Development (April 2002); and Critical Issues and Opportunities (May 2002). Each forum featured a moderated discussion of expert panelists followed by opportunities for public comment.

In January of 2002, the Commission's Executive Director issued the *Third Progress Report on Plan Implementation* to summarize the activities undertaken by the Commission during the previous 10 years. The Progress Report was organized by major Commission functions (e.g., land use planning, project review, regulatory programs) and concluded with a series of recommendations in the areas of community development, permanent land protection, resource protection and land management, research and planning, operations and permit streamlining, and education and interpretation. The Third Progress Report on Plan Implementation is available on the Commission's web site at www.nj.gov/pinelands.

Drawing on the foundation provided by the Pinelands Protection Act and the CMP, Commission staff next drafted vision statements to guide the development of recommendations for the two priority topics to be addressed by the third plan review: Permanent Land Protection and Regional Growth and Development. The comments received during the public forums and the findings from the Progress Report then served as a significant source of input in the crafting of a series of goals that flow from the vision statements. A series of alternative strategies and initiatives to implement each of the goals were also drafted. The vision statements, goals, strategies and initiatives were presented to the Commission for review,

followed shortly by a summary of the general costs and benefits associated with each initiative. In June of 2003, the Commission held a special meeting to select the strategies and initiatives that would best further progress towards achieving each of the goals. These decisions were memorialized in a resolution adopted by the Commission on July 11, 2003 and are intended to guide the Commission's actions over the next five years, until the next plan review is scheduled to commence.

The Commission identified eight initiatives relating to Permanent Land Protection and 12 initiatives relating to Regional Growth and Development. Many of these initiatives involve the provision of assistance to Pinelands municipalities in the development of plans, programs and ordinances related to open space, community design and infrastructure. Others involve the creation of task forces to address such issues as housing demand in the Pinelands and enhanced resource protection in the Toms River Corridor area in Jackson and Manchester Townships, Ocean County. Of relevance to the current rulemaking effort is an initiative calling for revision of the CMP's current Municipal Reserve criteria to improve their utility as a control on the pace of residential development in Regional Growth Area communities. Proposed amendments designed to implement this initiative are discussed in detail below.

The Commission is also proposing a series of other amendments related to the following: stormwater management; the cumulative cost of waivers and lot size variances; local communications facilities; expansion of the Cape May Landfill; and the pilot program for alternate design wastewater treatment systems.

Municipal Reserves

The pace of a community's growth can have significant implications for its character and functioning. Very slow or no growth can indicate a mature community or one that is in decline, while rapid growth can overwhelm a community's ability to provide services for its residents and others. The challenge facing all communities is finding ways to encourage a healthy rate of growth while avoiding the explosive "booms" that can severely stress local facilities. This challenge is complicated by the fact that many key factors affecting a community's growth rate - most notably, its location with respect to major employment centers - are outside of its direct control. Pinelands communities must also work within the framework of the CMP, which protects the region's unique natural resources by diverting growth from the most environmentally sensitive areas to more appropriate locations. The CMP anticipates that regional housing and development needs can largely be met in Regional Growth Areas without incursions into the most pristine parts of the Pinelands.

The 24 RGAs designated by the Pinelands Commission comprise less than 10% of the overall Pinelands Area, but are zoned to accommodate approximately 60% of the new homes to be built in the Pinelands over the coming decades. Since the CMP went into effect in 1981, more than 40,000 homes and businesses have been approved for development in the Pinelands, the vast majority of which are located in designated development areas. While the CMP has been quite successful in protecting the sensitive interior portions of the Pinelands from development, the pace of development in certain RGAs (a few of which have grown by as much as 300% over the past 20 years and are among the fastest growing in New Jersey), coupled with the lack of financial resources to provide

needed services have made it extremely difficult for some communities to accommodate these housing demands. The result in these locations is often overburdened school districts, congested roads, and stresses on other infrastructure systems and local services.

To the extent that a community can anticipate impending growth, standard and innovative land use planning practices offer a variety of tools to address certain impacts, such as zoning provisions to specify where and what type of development should occur, and design standards to foster development with desired attributes and amenities. The ability of a community to more directly control its growth rate, however, remains problematic. The Pinelands CMP currently allows municipalities to designate reserve areas as a mechanism to phase growth. These “municipal reserves” are portions of an RGA that are downzoned until other appropriately zoned districts that already have access to infrastructure are developed. For various reasons as discussed in more detail below, only one municipality to date has actively employed this approach. In light of the significant development pressures facing some RGAs, the Pinelands Commission identified the need to explore alternative approaches as part of its comprehensive review of the CMP, completed in 2003.

N.J.A.C. 7:50-5.62 contains minimum standards for the designation of municipal reserve areas to “plan for the orderly rate and pattern of growth”. A municipality can designate a municipal reserve area within its RGA if enough vacant developable land exists in the remainder of the RGA to meet the projected growth needs of the county and the municipality for the next 5 years. In addition, the designated reserve area must not currently have sewer service and other

essential public services, nor be planned for such services in the next 5 years, have a relatively uniform boundary that conforms to physical or environmental features, be next to areas designated for less intense development or not near currently developing areas and be designated as a Rural Development Area (RDA) and zoned accordingly.

Within 5 years of designating such a reserve, the CMP requires that ensuing development take place at higher RGA densities unless the municipality demonstrates that a delay is warranted because adjacent developable land in the RGA has not yet been substantially developed, all sewer service and other essential public services are not yet reasonably available or the amount of vacant developable land in all other RGAs in the municipality is sufficient to meet the projected growth needs of the county and the municipality for the next 5 years.

To date only one Pinelands municipality, Hamilton Township in Atlantic County, has implemented a municipal reserve program. Hamilton Township's reserve comprises approximately 2,500 acres in the municipality's RGA and was designated when the Township's Master Plan and land use ordinance were originally certified by the Pinelands Commission in 1985. The Township has since submitted demonstrations to delay imposition of higher densities several times, most recently in January 2004. The Commission agreed that a delay was justified because the RGA was not shown to be substantially developed and sufficient developable land remains to meet the projected growth needs of Atlantic County and Hamilton Township for the next 5 years.

While no formal survey has been done to ascertain why so few municipalities have availed themselves of the CMP's municipal reserve provisions, possible reasons include:

- CMP requirements for designating reserves are difficult to fully satisfy. In particular, the requirement for reserves within RGAs to be next to areas designated for less intense development or not near currently developing areas, is difficult to achieve in many RGAs given the scattered development patterns that have emerged in recent years.
- ? When confronted with a rapid increase in development, a community's attention is focused on surviving the onslaught of applications and the need to provide infrastructure and services, leaving few resources for undertaking proactive measures to reduce growth rates. Some of these municipalities are now nearing build-out (e.g., Barnegat and Stafford Townships), essentially eliminating the need for any such measures.
- ? The RGA is too small to allow for a municipal reserve to be designated (e.g., 5 of the 24 RGAs are estimated to have less than 20 upland acres).

The results of the Commission's analysis suggested that current CMP provisions for the designation of municipal reserves need to be revised in order to better accommodate multiple, smaller reserves in the target RGAs. The Commission is therefore proposing to revise the criteria at N.J.A.C. 7:50-5.62(b) so as to provide for greater flexibility in designating reserves within RGAs while also addressing other limitations of the current provisions (e.g., accounting for development opportunities on a regional level, ensuring that the development potential of reserve lands is sufficiently safeguarded to accommodate future growth, and linking future development to infrastructure planning). Amendments are also proposed to N.J.A.C. 7:50-5.63(b) to set forth standards which will apply to development within a reserve area during the time it is in effect.

Proposed amendments to N.J.A.C. 7:50-5.62(b) would allow for the designation of municipal reserves within the RGA, provided sufficient vacant, developable land remains in a municipality's RGA and in other portions of the municipality, including those outside the Pinelands Area, to meet the projected growth needs of that municipality for the next six years. A period of six years, rather than the current five, was selected to coincide with the municipal master planning cycle required under the Municipal Land Use Law. In terms of geography, each reserve area would need to encompass at least 50 contiguous acres of predominantly vacant land. Parcels would need to be included in the reserve area in their entirety pursuant to proposed N.J.A.C. 7:50-5.62(b)2. Areas predominantly comprised of parcels under 10 acres in size or wetlands, as well as lands currently served by sewer or planned for sewer service in the near future, are not to be included in reserve areas pursuant to proposed N.J.A.C. 7:50-5.62(b)3, 4 and 5. Finally, lands within reserve areas must be designated as Rural Development Areas.

Proposed N.J.A.C. 7:50-5.62(c) requires the submission of a plan to the Commission assessing the need for sewer service, other public service infrastructure and capital improvements within a reserve area at the time of its designation. Said plan must indicate how and when such services and improvements will be provided to the reserve area. If the plan indicates that sewer service, other public service infrastructure or capital improvements will be necessary during the six-year duration of a reserve area, the municipality must prepare and adopt a Capital Improvements Program in accordance with the relevant provisions of the Municipal Land Use Law (N.J.S.A. 40:55D-29 and 30) and submit that Program to the Commission.

Amendments are also being proposed to N.J.A.C. 7:50-5.63(b) which sets forth provisions which municipalities must include in their master plans and land use ordinances to govern development within reserve areas. Proposed N.J.A.C. 7:50-5.63(b)1 requires that a maximum residential density of one unit per 10 acres be established in reserve areas, with all development to be clustered on one acre lots. Proposed N.J.A.C. 7:50-5.63(b)1ii requires the use of alternate design wastewater treatment systems, rather than conventional septic systems, within the reserve area. Proposed N.J.A.C. 7:50-5.63(b)1iii further requires that residential development within a reserve area be designed so as to facilitate access to other parts of the parcel that may be developed in the future at RGA densities, following expiration of the reserve area. Proposed N.J.A.C. 7:50-5.63(b)2 requires the purchase and redemption of one-quarter of a Pinelands Development Credit for each residential unit developed in a reserve area. Proposed N.J.A.C. 7:50-5.63(b)3 sets forth standards for development transfer programs within reserve areas. These programs must be limited to the development of existing undersized lots (i.e., those under 10 acres in size). All of these standards are designed to allow for a limited amount of development within municipal reserves in a manner which preserves, as much as possible, opportunities for development on the bulk of the land at the higher RGA densities which will ultimately be permitted in the future.

Finally, N.J.A.C. 7:50-5.63(b)4, previously (b)1, is being revised to reflect the new six-year duration of municipal reserves as well as to clarify the circumstances under which such reserves may be continued. Essentially, if a municipality is able to demonstrate that a reserve area continues to meet all of the criteria for designation of such areas set forth at N.J.A.C. 7:50-5.62(b) and if capital

improvements within the reserve area are not needed, the reserve may be continued and the ability to develop at higher RGA intensities may be delayed.

Stormwater Management

On February 4, 2004, the New Jersey Department of Environmental Protection (DEP) adopted new Stormwater Management Rules (N.J.A.C. 7:8) which require all municipalities to adopt municipal stormwater management plans and stormwater management ordinances to address stormwater-related water quality, groundwater recharge and water quantity impacts of major development. Municipalities and applicants for development in the Pinelands are required to manage stormwater pursuant to both these new NJDEP rules and the stormwater management standards of the CMP (N.J.A.C. 7:50-6.84). While both N.J.A.C. 7:8 and N.J.A.C. 7:50-6.84 address water quality, water quantity and groundwater recharge, there are some differences between these two regulations which the Commission believed might create confusion for municipalities, applicants and those seeking to administer each set of regulations. The Commission therefore retained a consultant to conduct a detailed review of each set of regulations and to develop a joint Pinelands-DEP model stormwater control ordinance for adoption by all municipalities in the Pinelands Area.

In the course of developing the joint model stormwater control ordinance, the Commission's consultant identified amendments to the CMP which were necessary for purposes of integrating the new DEP requirements. Also identified were amendments to reflect current state-of-the-art in stormwater engineering practice. The amendments being proposed at N.J.A.C. 7:50-6.84(a)6 seek to accomplish both objectives. The Commission believes these amendments meet the goal of

harmonizing the DEP and CMP regulations in a manner that is consistent with the goals of the CMP and recognizes the special resources of the Pinelands which the Commission is charged with protecting.

The proposed amendments at N.J.A.C. 7:50-6.84(a)6 require that surface water runoff be managed in accordance with DEP's stormwater regulations, specifically N.J.A.C. 7:8, subchapters 5 and 6, and DEP's Stormwater Best Management Practices Manual, dated February 2004 and as amended, except as expressly modified and supplemented in N.J.A.C. 7:50-6.84(a)6i through viii. These additional or differing requirements address the pre-treatment and recharge of stormwater from high pollutant load areas and provide specific site assessment protocols for major development. The proposed amendments further require low impact site design, provide standards for permanent stormwater facility maintenance, and address management of onsite soil resources including post construction soil and site assessments to field verify that as-built site conditions are consistent with stormwater design assumptions.

Exceptions to the stormwater management standards are provided in proposed N.J.A.C. 7:50-6.84(a)6vi. Proposed N.J.A.C. 7:50-6.84(a)6vi(1) retains the current CMP exception for minor residential and nonresidential development under certain conditions. Proposed N.J.A.C. 7:50-6.84(a)6vi(2) specifies that the nonstructural strategies set forth in DEP's stormwater regulations are not required for development which would create less than one acre of disturbance in the Pinelands. Perhaps most notably, proposed N.J.A.C. 7:50-6.84(a)6vi(3) provides applicants for major development in the Pinelands with the opportunity to demonstrate that stormwater management would more effectively be achieved through measures other than those specified at N.J.A.C. 7:50-6.84(a)6, including

the use of off-site mitigation measures. Such measures will be operable only in those Pinelands municipalities which have adopted municipal stormwater management plans that specify the circumstances under which such alternative measures would be appropriate and identify those parcels or projects elsewhere in the Pinelands Area where any off-site mitigation would be permitted to occur. Commission certification of these stormwater plans is required pursuant to N.J.A.C. 7:50-3 and a specific standard which such plans must meet is being proposed at N.J.A.C. 7:50-3.39(a)2ix.

Cape May Landfill

When the CMP took effect on January 14, 1981, it included provisions at N.J.A.C. 7:50-6.74(a) and 6.75(a)5 which essentially required that all solid waste landfills located in the Pinelands Protection Area be terminated no later than August 8, 1990. This requirement was based on the Commission's determination that the resources of the Pinelands were not an appropriate location for landfills. Nevertheless, on July 6, 1981, the Commission approved a Waiver of Strict Compliance to permit the Cape May County Municipal Utilities Authority (CMCMUA) to locate a new landfill within the Pinelands Area that would continue operation after the August 8, 1990 termination date, on the condition that after that date, the landfill could be utilized only for residuals from a resource recovery operation and as an emergency back-up to that recovery facility. The Commission concluded that if the conditions regarding use of the landfill after August 8, 1990 were met, the granting of the waiver would not result in substantial impairment of the resources of the Pinelands. The waiver granted by the Commission took effect on August 10, 1981.

On March 4, 1983, the Commission approved the development of the CMCMUA landfill at a site within the Pinelands Forest Area of Upper Township. As a condition of the development approval, the Commission required that after August 8, 1990, the landfill could be used only for the disposal of residuals and unprocessable wastes from a resource recovery operation and as an emergency back-up facility for such an operation. The Commission's approval was specifically for the construction of a landfill containing four cells. The CMCMUA proceeded to construct the landfill at the approved site and operations commenced in the summer of 1984.

In March of 1989, the CMCMUA filed an application for a modified Waiver of Strict Compliance with the Commission. This application requested that the Commission allow landfilling of mixed solid waste at the landfill until either the end of 1991 when a landfill outside the Pinelands would be operational or March of 1993 when the resource recovery (composting) facility would be operational. On July 13, 1990, the Commission approved an extension of the previously approved waiver, allowing the Cape May Landfill to accept solid waste until December 31, 1992, after which it would have to be permanently closed. The CMCMUA subsequently appealed the Commission's decision. On July 10, 1992, the Commission voted to accept a settlement agreement proposed by the CMCMUA to extend the December 31, 1992 landfill closure date until May 1, 1996. The new closure date was selected in order to coincide with the CMCMUA's timetable for completing the development of a composting facility which was intended to reduce the amount of waste requiring landfilling.

On June 30, 1994, the New Jersey State Legislature passed the Solid Waste Disposal Capacity Assurance Act, allowing the permitted continued use and

expansion of the Cape May Landfill irrespective of the existing settlement agreement between the Commission and the CMCMUA. Then Governor Christine Todd Whitman conditionally vetoed said Act so that it would be effective only upon the approval of the Secretary of the Interior pursuant to the provisions of Section 502 of the National Parks and Recreation Act of 1978, Pub.L. 95-265 (16 U.S.C. Section 471i). On November 10, 1994, the Secretary of the Interior disapproved the State's Solid Waste Disposal Capacity Assurance Act on the basis that it constituted a modification of the Federally approved Pinelands CMP. The Secretary recommended that the CMCMUA petition the Commission for a new waiver or an amendment to the CMP.

The Commission and the CMCMUA subsequently agreed to submit the matter for dispute resolution with the Department of Environmental Protection (DEP). A series of mediation meetings took place between February and June of 1995, after which an agreement was reached and signed by representatives of the Commission, the CMCMUA and the DEP. The Commission then voted on July 14, 1995 to accept the terms of the settlement agreement and authorize the proposal of amendments to the CMP. These amendments, which took effect in April of 1996, essentially authorized the CMCMUA to continue landfilling beyond May 1, 1996 under certain conditions. These conditions included a limitation on the area to be used for future landfilling to 42 acres within a Pinelands Town management area and the deed restriction of the remaining landfill property to preclude any other landfilling. The total approved landfill area thus totaled 93 acres. As a result of the amendments, landfilling operations at the site were limited only to location; there was no longer any time or date limitation. This change in approach was based on the Commission's recognition that the environmental risks associated with the use

of the landfill's existing capacity and adjacent available sites were dependent not so much upon when the landfill closed but instead upon the total volume of waste to be landfilled.

The CMP amendments adopted by the Commission in 1996 also required a mitigation payment to the Commission by the CMCMUA of \$2.04 per ton of waste disposed in the landfill until the amount reaches \$2,250,000. These monies were to be used solely for the purchase of conservation and recreation lands within the Pinelands National Reserve, with at least eight percent utilized for purchases in Cape May County's portion of the Pinelands National Reserve. At the time the amendments were adopted, it was estimated that between 2,200 and 4,400 acres of conservation and recreation lands could be acquired with the funds received from the CMCMUA. A total of \$2,250,000 has since been received by the Commission from the CMCMUA. To date, slightly more than half of these funds have been expended, resulting in the acquisition and permanent protection of approximately 1,950 acres in the Pinelands.

In January of 2004, the CMCMUA approached the Commission with a request to once again extend the life of the Cape May Landfill by increasing the area available for future landfilling. The CMCMUA submitted that the 1995 settlement agreement between the Commission, the CMCMUA and the DEP contained a negotiated provision for redefining the landfilling area in the future. Specifically, the settlement agreement provided that "landfilling would be prohibited on any other portions of the existing CMC MUA Sanitary Landfill site by a deed restriction enforceable by the Pinelands Commission (except as may subsequently be authorized by amendment of the Pinelands Comprehensive Management Plan)."

In response to the CMCMUA's request, the Commission requested that the CMCMUA assess all potential uses of its landfill site in order to delineate all areas proposed for solid waste related activities, including landfilling. The Commission further indicated an interest in the permanent deed restriction of all portions of the CMCMUA's landfill site which were not proposed for landfilling, thus precluding the CMCMUA from seeking further expansions at any time in the future. A suggestion was also made that the environmentally sensitive portions of the landfill site be permanently protected as conservation areas through deed restriction. Finally, the Commission indicated that as had been the case with the 1996 amendments to the CMP, an adequate offset or mitigation payment, based on rational principals, would be necessary. The Commission was also concerned with the impacts of the rate of development in non-Pinelands communities in Cape May County on the remaining life of the landfill, particularly due to demolition and reconstruction of existing homes. Therefore, the Commission also asked that measures be taken to ensure that additional landfill capacity would not provide an economic incentive to further the rate of development.

Commission staff and representatives of the CMCMUA met during 2004 and 2005 to develop a plan which would allow for expansion of the landfill in a manner which addressed the issues and concerns raised by the Commission. The result of those meetings is the amendments now being proposed at N.J.A.C. 7:50-6.75(i). Proposed N.J.A.C. 7:50-6.75(i)1 and 2 indicate that landfilling will be allowed to occur on approximately 167 acres of land currently owned by the CMCMUA within the Pinelands Town management area in Upper Township and Woodbine Borough, both on the 93 acres of land which were the subject of the 1996 CMP amendments (N.J.A.C. 7:50-6.75(i)2i) and on an additional 74 acres of land

(N.J.A.C. 7:50-6.75(i)2ii). Use of these additional 74 acres will allow for the development of three additional landfill cells, extending the life of the landfill by as many as 20 years.

N.J.A.C. 7:50-6.75(i)6 is being amended to specify the terms of the deed restrictions which the CMCMUA will be required to impose. Proposed N.J.A.C. 7:50-6.75(i)6i requires the imposition of a deed restriction prohibiting any landfilling activities on lands owned by the CMCMUA, with the exception of those lands specifically authorized for landfilling in accordance with N.J.A.C. 7:50-6.75(i)2. Land use on the remaining portions of the Landfill Site will be limited to solid waste and recycling related activities, specifically excluding landfilling. Proposed N.J.A.C. 7:50-6.75(i)6ii further requires the imposition of a deed restriction prohibiting any development on lands owned by the CMCMUA north of the areas proposed for landfilling. Lands subject to this second and more restrictive deed restriction total approximately 90 acres of the overall 486-acre landfill site and are located in the Pinelands Forest Area, in Upper Township. The requirement for permanent protection is being implemented in part to recognize the environmental sensitivity of these areas but also to surround the landfill site, to the extent possible, with permanently protected lands, thereby precluding its future expansion into these areas.

N.J.A.C. 7:50-6.75(i)7 is being amended to reflect the terms of the environmental offset which will be required of the CMCMUA in exchange for the expanded landfill capacity authorized in N.J.A.C. 7:50-6.75(i)1 and 2. Proposed N.J.A.C. 7:50-6.75(i)7ii requires that the CMCMUA make a payment of \$4,651,045 to the Commission. The amount of this payment was established based upon the projected landfilling capacity or tonnage gained as a result of the

expansion permitted pursuant to N.J.A.C. 7:50-6.75(i)2ii and fifty percent of the escalated host community benefit paid to each of the landfill's host communities (Upper Township and Woodbine Borough). Conservative tonnage projections were made for future years. The total amount of the payment was calculated starting upon initial use of the proposed new landfill cells (year 2014) and continuing until the proposed cells are filled (year 2034). Annual payments were based upon one-half of the escalated per ton host community benefit for each year, times the number of tons projected to be landfilled for that year, over the life of the expansion. The current host community benefit was escalated by long-term historic CPI increase of 3.05% per year. If payments were to be made annually during the life of the landfill expansion (2014 – 2034), future payments would total \$13,826,607. The present value of \$13,826,607 is \$4,651,045, which is the figure specified in proposed N.J.A.C. 7:50-6.75(i)7ii in recognition of the CMCMUA's and the Commission's preference for a single up-front payment. It should be noted that \$4,651,045 represents present value as of December 31, 2004. The actual payment required pursuant to proposed N.J.A.C. 7:50-6.75(i)7ii must equate to \$4,651,045 plus interest carried forward to the effective date of the proposed amendments.

Proposed N.J.A.C. 7:50-6.75(i)7iii establishes requirements for an "excess tonnage payment" which the CMCMUA will be required to pay to the Commission should the total tonnage of solid waste materials landfilled during any five year period exceed the projections for that period upon which the required payment in N.J.A.C. 7:50-6.75(i)7ii was based. Conservatively established projections (i.e. modest growth projection) were used for future years to the year 2035. Excess tonnage payments will be calculated and assessed in five year increments. If total

tons landfilled during any five year increment exceeds projections for the period, the excess tonnage payment would be based on the difference between the quantity of tons received and the projections, multiplied by one-half of the then prevailing host community benefit paid to the host communities. It should be emphasized that these “excess tonnage payments” in no way authorize the CMCMUA to increase the size or capacity of the landfill. All landfilling will be required to occur within that area defined in proposed 7:50-6.75(i)1 and 2. The payments being required in proposed N.J.A.C. 7:50-6.75(i)7iii relate only to the rate at which the available, permitted landfilling capacity is used.

N.J.A.C. 7:50-6.75(i)8, which governs the use of funds received from the CMCMUA, is being amended to include subsection 8ii. Should the Commission determine that the funds received from the CMCMUA pursuant to N.J.A.C. 7:50-6.75(i)7ii and iii would best be used for the acquisition and permanent protection of land, proposed N.J.A.C. 7:50-6.75(i)8 would require that at least eight percent of the funds be used to acquire land in Cape May County. This particular figure was determined by calculating the percentage of land in Cape May County located in the entire Pinelands National Reserve which spans seven counties and 56 municipalities.

Local Communications Facilities

Since 1981, when the CMP went into effect, the construction of tall structures has been discouraged throughout much of the Pinelands Area. These regulatory limitations, which incorporated a 35-foot height limit, were intended to prevent the littering of the Pinelands skyline with structures that significantly detract from the scenic qualities which federal and state Pinelands legislation called upon the

Pinelands Commission to protect. There were, of course, exceptions to this requirement: certain structures were allowed to exceed 35 feet in height; and no restrictions were placed on height within the two most development-oriented Pinelands management areas - Regional Growth Areas and Pinelands Towns.

However, in 1994, as the Pinelands Commission was nearing the end of its second full review of the CMP, representatives of the cellular telephone industry requested that the Commission take note of the growing need for portable telephone communications and the associated need for the placement of antennas higher than 35 feet in all parts of the Pinelands Area. To accommodate what it felt was a legitimate need, the Pinelands Commission in 1995 amended the CMP to permit local communications facilities to exceed the 35-foot height limit if a comprehensive plan for the entire Pinelands is first prepared and approved by the Pinelands Commission. The regulations recognized that: local communications systems rely on a network of facilities to receive and transmit radio signals; the location of each cell within this network has an effect on the location of other cells; and a well designed and integrated network can avoid the proliferation of towers throughout the entire Pinelands Area, and, most importantly, in its most conservation-oriented areas. Once a comprehensive plan is approved, the regulations anticipate that site specific siting decisions will be made and that individual development applications will be submitted and evaluated against a series of site specific development standards. These regulations were adopted by the Commission in June 1995 and went into effect on August 21, 1995.

The adopted regulations required providers of "the same type of service" to jointly submit a comprehensive plan, primarily to ensure that the least number of facilities is built in the Pinelands overall. Members of the cellular industry

(comprising Verizon [formerly Bell Atlantic Mobile], Cingular [formerly Comcast], and Nextel) responded by submitting a regional plan (generally referred to as the Cellular Plan) that was approved by the Commission in September, 1998. Almost immediately thereafter, representatives of the PCS industry (including Sprint Spectrum and T-Mobile [formerly Omnipoint]) made inquiries of the Commission regarding the procedures and components involved in an acceptable plan for their service. The PCS plan, building on and essentially serving as an amendment to the Cellular Plan, was approved by the Commission in January, 2000. In 2003, AT&T submitted an amendment to the Cellular and PCS Plans because its communications system functions at both the cellular and PCS frequencies. The AT&T amendment was approved by the Commission in December, 2003.

The experience gained by the Commission in its review and approval of the three local communications facility plans, as well as during the review of individual development applications, led to the identification of a number of ways in which the regulations could be clarified and therefore improved. The first of these clarifications appears in N.J.A.C. 7:50-5.4(c)3 and again in proposed N.J.A.C. 7:50-5.4(c)4vii. The amendments being proposed to both of these sections essentially require that if more than one existing structure or location for a local communications facility (be it an antenna or new tower) is identified as being feasible from a technical perspective, the structure or location which offers the least potential for visual impacts on various roads, low intensive recreation facilities, campgrounds, wild and scenic rivers, residential dwellings and certain special Pinelands resources must be utilized. From the outset, the Commission has

interpreted its regulations to require such a determination; however, the CMP would benefit from having this requirement made explicit.

A second amendment is being proposed at N.J.A.C. 7:50-5.4(c)4vi which sets forth a list of sites at which new local communications facilities may be located in the Preservation Area District, Forest Area, Special Agricultural Production Area and Rural Development Area. As currently written, N.J.A.C. 7:50-5.4(c)4vi(1) restricts the location of local communications facilities in these management areas to municipal commercial or industrial zones or mixed use zones which permit a variety of nonresidential uses. The reference to mixed use zones is proposed for deletion as its meaning was never clear to the regulated community. In addition, N.J.A.C. 7:50-5.4(c)4vi(1) is being amended to allow for the siting of new facilities on the parcel of any existing commercial or industrial use within a Rural Development Area, regardless of its municipal zoning designation. This amendment is intended to recognize that existing commercial and industrial uses are conforming uses in a Rural Development Area pursuant to N.J.A.C. 7:50-5.26 and, moreover, that Pinelands municipalities have the ability to establish commercial and industrial zones within their Rural Development Areas in accordance with N.J.A.C. 7:50-5.26(b). The same is not true of the Preservation Area District, Forest Area or Special Agricultural Production Area and therefore the siting limitations which apply to these management areas remain unchanged. While it is unlikely to affect many projects, the Commission's hope and expectation is that this proposed amendment will make the siting of certain local communications facilities in the Rural Development Area, for which a need has already been established through a comprehensive siting plan, easier.

The final amendments being proposed relative to local communications facilities relate to the required content of and approval process for comprehensive plans set forth at N.J.A.C. 7:50-5.4(c)6. Said comprehensive plans will now be required to address situations where proposed new facilities cannot be sited in accordance with the requirements of N.J.A.C. 7:50-5.4(c)4vi or the minimum environmental standards of N.J.A.C. 7:50-6 or without having significant visual impacts on important Pinelands resources. In such cases, comprehensive plans will be required to specify how the use of multiple shorter facilities (towers) or alternate technology could meet the technical needs identified in the comprehensive plan in a manner which would have less of an overall visual impact than one taller facility. During its review of individual development applications, the Commission will also be able to require the use of multiple shorter facilities or alternate technology. Finally, N.J.A.C. 7:50-5.4(c)6v is being amended to clarify the obligations of both the industry when an amendment to an approved comprehensive plan is submitted for review and the Commission during its review of such an amendment. The applicant who submits an amendment will be required to provide copies of that amendment, via certified mail, to all of the local communications providers who provide the same type of service or have a franchise to do so within the Pinelands Area, for their review and comment. The requirement that amendments be agreed to and submitted jointly by all such providers has been eliminated, thereby precluding the possibility of one provider's being able to block submission of an amendment by a competitor. A sentence has also been added to N.J.A.C. 7:50-5.4(c)6v to clarify that the Commission may consider any information or comments submitted by other local communications providers during its review of an amendment.

Cumulative Cost of Waivers and Municipal Variances

Amendments are being proposed at N.J.A.C. 7:50-5.27(c) and 5.28(a)4 in order to eliminate the requirement for purchase of Pinelands Development Credits (PDC) in association with municipal variances which grant relief from density or lot area requirements in Pinelands Villages, Pinelands Towns, Regional Growth Areas **in those cases where a Waiver of Strict Compliance from the Commission is also required.** A similar amendment is being proposed at N.J.A.C. 7:50-5.32(b)3 for those cultural housing applications which require municipal variances because they involve development on existing lots of less than one acre in size. Under current regulations, the development of such lots requires the purchase of one-half of a PDC, one-quarter as a result of the municipal variance approval and one-quarter as a requirement of the Waiver of Strict Compliance. Waivers are somewhat similar, although not identical, to zoning variances which municipalities are authorized by the Municipal Land Use Law to grant. Unlike variances, however, waivers of strict compliance authorize deviations from CMP standards and can only be granted by the Commission. One-quarter of a PDC must be purchased and redeemed whenever a waiver of strict compliance is granted pursuant to N.J.A.C. 7:50-4.62. The effect of the proposed amendments, therefore, will be to cut in half the number of PDCs required for the development of such lots, from one-half to one-quarter of a PDC.

PDCs are transferable development rights which may be purchased from owners of property in the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area. Upon redemption, each development right (which equates to one-quarter of a PDC) has, in recent years, served to permanently protect an average of eight to ten acres of ecologically

sensitive or agriculturally important land in the Pinelands Area. In 1992, when the requirement for purchase of PDCs in association with Waivers of Strict Compliance was adopted by the Commission, the average price of one development right was just over \$3,500. Ten years later, the average selling price had increased only to \$7,750. More recently, however, the cost of PDCs has increased rapidly. Thus far in 2005, sales prices have ranged from \$20,000 to \$40,000 per development right, with an average sales price close to \$30,750. The price of PDCs in relation to housing values in the Pinelands has also escalated; the percentage of one development right in relation to home value more than tripled between 1992 and 2004. This dramatic increase in price drew the Commission's attention to the cumulative costs associated with the development of some undersized lots in the Pinelands Area, in particular those for which the use of an alternate design wastewater treatment system is required. Under the pilot program authorized at N.J.A.C. 7:50-10, Part IV, one of five alternate design wastewater treatment systems must be used whenever a lot of less than 3.2 acres in size is proposed for development and sewer service is either unavailable or not permitted. The most recent information available to the Commission indicates that the price of any one of the authorized alternate design systems is, on average, close to \$32,000. It is important to note that this price includes the cost of the five-year warranty, operation and maintenance contract and effluent testing required under the pilot program, items which are not required by the CMP for conventional septic systems. Nevertheless, it does represent a significant increase over the cost of a conventional septic system (approximately \$8,000) and the previously authorized pressure dosing systems (approximately \$12,000).

Based on the above information, the total cost for an undersized lot which requires a waiver from the Commission, a municipal variance and an alternate design wastewater treatment system could easily exceed \$90,000. The Commission believes this to be excessive and is therefore proposing to reduce the number of PDCs which would need to be purchased for such applications. The purchase of 0.25 PDCs would continue to be required for the waiver. The use of an alternate design wastewater treatment system would also continue to be required. What would be eliminated is the need to purchase an additional 0.25 PDCs, a requirement which is now triggered by the issuance of a municipal variance from lot area or density.

A review of the waivers of strict compliance approved by the Commission between 1999 and July, 2005 suggests that it is likely very few applications will be affected by the proposed amendment. Of the 80 waivers approved by the Commission during this time period, only four involved undersized lots in a Regional Growth Area, Pinelands Village or Pinelands Town. Only one waiver involving a cultural housing application was approved. These five waivers were for the development of single family homes in areas where alternate design wastewater treatment systems would be necessary due to lot size (less than 3.2 acres) and the unavailability of sewer service. While the proposed amendment will also affect applications involving undersized lots in sewerred Regional Growth Areas, Pinelands Villages and Pinelands Towns, no waivers for such lots were approved by the Commission during the selected time period. Given the very small number of potentially affected applications, the proposed amendments will have a negligible impact on the PDC program and the Commission believes they are reasonable and justified.

It should be noted that the Commission is also proposing to clarify both N.J.A.C. 7:50-5.27(c) and 5.28(a)4 with respect to the types of municipal approvals which trigger the requirement for PDC purchase. As previously written, these sections appeared to require PDC purchase only if municipal density or lot area variances were issued. As the Commission's intent was always to require the purchase of PDCs whenever the permitted densities set forth in a certified municipal ordinance for a Regional Growth Area, Pinelands Village or Pinelands Town were being exceeded, the relevant sections are being revised to make clear that it is any local approval, including a variance of any type, which results in an increase in residential density which triggers the PDC requirement.

Pilot Program for Alternate Design Wastewater Treatment Systems

The Commission is proposing a change at N.J.A.C. 7:50-10.22(a)6i to implement its previous approval, with modifications, of the petition submitted by the New Jersey Builders Association to amend the CMP pursuant to N.J.A.C. 7:50-7. Said petition requested that the Commission's Pilot Program for Alternate Design Wastewater Treatment Systems be amended by eliminating the requirement set forth at N.J.A.C. 7:50-10.22(a)6i that there be no more than 10 alternate design wastewater treatment systems utilizing the same technology on any parcel. Notice of the filing of this petition was published in the New Jersey Register on April 18, 2005 (see 37 N.J.R. 1237(a)). The Executive Director recommended that the Commission grant the petition, with modifications, and proceed with a formal rulemaking proposal. At its June 10, 2005 meeting, the Commission accepted the recommendation of the Executive Director and approved the petition, with

modifications. Notice of the Commission's approval is scheduled for publication in the New Jersey Register on August 15, 2005.

In accordance with the Commission's approval of the above-described amendment petition, N.J.A.C. 7:50-10.22(a)6i is being amended to provide prospective developers in the Pinelands Area with the ability to install more than 10 alternate design wastewater treatment systems of the same technology on a single parcel, provided the Executive Director determines that the use of the additional systems on the parcel would not substantially alter the character of the certified zoning plan of the municipality in which the parcel is located, taking into account existing and planned infrastructure and the role of the parcel in the Pinelands Development Credit program. Should the Executive Director make such a determination, the additional lots may be serviced, proportionately, by those alternate design pilot program technologies which have been certified by the Executive Director pursuant to N.J.A.C. 7:50-10.22(a)2 and are commercially available for use in the Pinelands.

Under the Commission's Pilot Program for Alternate Design Wastewater Treatment Systems, the installation of five certified technologies is permitted through August 5, 2007 for residential development in those municipalities which have authorized the use of the systems through adoption of amendments to their land use ordinances. Although it remains unlikely that, during the remaining duration of the Pilot Program, the Commission will receive more than one or two applications for residential development proposing the use of pilot program systems for more than 40 or 50 units, the proposed amendment has been drafted in such a way as to give the Executive Director flexibility in reviewing such applications. The main purpose for doing so is to allow for a greater level of

scrutiny to those projects proposed in Regional Growth Areas designated for future sewer service and the resulting higher residential densities. The Commission believes it to be advisable that the Executive Director have the ability to limit the number of systems in such projects, thereby limiting the amount of vacant land developed at the lower densities necessitated by the use of septic systems. In so doing, opportunities for additional residential development and the use of PDCs would be preserved for the point in time when sewer service becomes available.

Social Impact

No adverse social impact is anticipated as a consequence of the adoption of the proposed amendments. In fact, any social impacts at all are expected to be positive, although to a varying extent.

The proposed amendments relating to municipal reserves are designed to encourage municipalities to designate such areas as a means of better planning for growth. There is certainly a social benefit to be gained by designating areas for low intensity development until such time as the necessary infrastructure and capital improvements can be made available to facilitate higher density development. Municipalities will retain the option of designating reserves; it is not something which the CMP currently mandates and this is not being changed by the proposed amendments. It is therefore difficult for the Commission to predict which Pinelands municipalities or how many may elect to take advantage of the more flexible criteria for the designation of municipal reserves now being proposed. However, the Commission will encourage many RGA municipalities to take a proactive approach to growth management by considering the benefits provided by designation of reserve areas. While measures to manage growth are typically

considered during times of rapid development (i.e., when the need is immediate), it is worth noting that a municipality should not wait for a crisis to occur. Therefore, while the need for growth management measures, such as the designation of reserve areas, may not yet be pressing in some Pinelands RGAs, it does not necessarily follow that they or the Commission should ignore such measures. Indeed, they may be better positioned than some of the faster-growing locations to receive the maximum benefits from designating reserves and taking steps to manage future growth now.

The proposed amendments related to stormwater management at N.J.A.C. 7:50-6.84(a)6 are designed to provide one set of regulations which, if followed, will enable applicants and municipalities to comply with both DEP and CMP rules. This should simplify the application process and reduce confusion on the part of applicants as to which set of standards must be applied to a particular project. In addition, the proposed amendments provide for a certain degree of flexibility in designing stormwater management measures and go so far as to allow for off-site mitigation under certain circumstances. It is the Commission's hope that increased flexibility will lead to innovation, creativity and overall improved stormwater management in the Pinelands. In addition, the proposed amendments encourage the retention of natural vegetation and the use of less structural measures to control stormwater management. Among other things, the goal of this approach is to provide a more aesthetically pleasing method for the control of stormwater runoff.

The proposed amendments related to the Cape May Landfill are expected to have a positive social impact in that they will assure the continued availability of reliable long-term solid waste disposal capacity within Cape May County and

enable the CMCMUA to provide long-term planning and financing for its various solid waste and recycling programs. The proposed amendments will extend the life of the landfill by perhaps as many as 20 years. Continuing to provide a locally available low-cost disposal option for solid waste should aid in reducing litter and illegal dumping in the Pinelands. The importance of the continued operation of the landfill is evidenced through the adoption of resolutions in support of the proposed expansion by both host communities (Upper Township and the Borough of Woodbine) as well as Cape May County itself. Additional incentives for recycling are provided through the establishment of the “excess tonnage” payment requirements at proposed N.J.A.C. 7:50-6.75(i)7iii and this should also be of benefit.

In terms of the proposed amendments related to local communications facilities, these are for the most part simple clarifications to procedures and standards which are expected to have little social impact. The amendments do provide for increased flexibility in the siting of new facilities in the Rural Development Area and this should provide the opportunity for improved cellular service to the residents of and travelers through the Pinelands.

The proposed amendments relating to the cumulative cost of waivers and municipal variances do not alter the standards which applicants must meet in order to receive either a waiver approval from the Commission or a variance from a Pinelands municipality. They merely reduce the PDC purchase requirements associated with certain municipal variances, thereby reducing costs and presumably making it somewhat easier for such projects to move forward.

No social impacts are expected to result from the proposed amendment to the Commission's pilot program for alternate design wastewater treatment systems.

Economic Impact

Adoption of the proposed amendments will, on a regional basis, have a minimal economic impact. However, in individual circumstances, economic impacts may be viewed as being more significant.

The economic impact of growth management programs, such as the designation of municipal reserve areas within RGAs, is an enormously complex issue that has been the subject of numerous studies, often with conflicting findings. According to the basic laws of supply and demand, any action that reduces the supply of housing will increase price. This effect has the potential to be exacerbated by the fact that in fast-growing areas such as RGAs, demand is already high. But these basic assumptions are complicated by many factors. To begin with, in some of the larger RGAs in the Pinelands Area, the backlog of approved, but unbuilt projects, may be substantial in size. This backlog could conceivably accommodate several years worth of housing demand. Consequently, this "hidden" supply could act to keep prices down, at least in the short-term, if municipal reserves are implemented. Hamilton Township's currently designated municipal reserve is arguably not affecting local housing prices because of ample supply and the backlog of approved units in other portions of that municipality's RGA.

A more precise estimate of the impacts of growth management measures, such as the designation of municipal reserves, on housing prices in the Pinelands

would require more information on programmatic details and the available supply of developable land in other portions of the RGA (and perhaps outside these areas, in other portions of Pinelands municipalities as well). It is also worthwhile to note that the effects of municipal reserve designations may be borne differently by different members of the community. For example, owners of existing homes may experience an increase in personal wealth since their tax dollars will no longer be used for the development of unscheduled facilities/services, and new homeowners may experience lower tax rates than would be expected in the absence of growth management measures. The point at which a price increase becomes too burdensome for potential buyers is also not well understood, since home ownership is increasing across the nation despite increasing housing costs.

While the designation of municipal reserves may well have a negative economic impact, at least temporarily, on the owners of land within such a reserve, a municipality that designates a reserve area can expect to be impacted positively. Designation of a reserve area is intended to provide a municipality with the opportunity to plan for the installation of sewers and other necessary infrastructure in an efficient fashion. More coordinated development and municipal expenditures will therefore result.

With respect to the proposed amendments related to stormwater management, both positive and negative economic impacts may result. The amendments encourage the use of nonstructural solutions to stormwater runoff control; such solutions are often more cost effective and so this may result in cost savings to a developer or property owner. New requirements for field permeability testing and the submission of as-built plans following construction of stormwater facilities will increase costs. However, as these requirements are designed to

ensure that stormwater facilities are appropriately located and constructed so that they will function as intended, they may in the long run result in a cost savings in terms of maintenance if basins do not need to be repaired or reconstructed. Certainly having only one set of regulations to follow, rather than separate DEP and CMP rules, will make the application process more straightforward and perhaps less costly as a result.

The economic impact of the proposed amendments related to the Cape May Landfill is clearly beneficial to the residents of Cape May County in that continued operation and expanded capacity of the landfill will assure the availability of a long-term disposal option for the County's non-recycled solid waste. Alternate sites within the County are not available. Extending the life of the Cape May Landfill will allow the County to remain self-sufficient in terms of solid waste disposal for the foreseeable future.

As provided in proposed N.J.A.C. 7:50-6.75(i)7ii, the CMCMUA will be responsible for making a payment to the Commission of over \$4.6 million (the exact amount will be determined based upon that value plus interest at the time the amendments take effect). This required payment may or may not cause an increase in the tipping fees for residents who send their waste to the Cape May Landfill. Regardless of how the funding is raised, the required payment may initially be viewed as having a negative economic impact on Cape May County. However, as a result of the payment, the County will obtain the economic benefits provided by continued operation and expansion of the landfill, as well as long-term assurance of a solid waste disposal option in the face of the potential high costs of out-of-State disposal.

The economic impact of the proposed amendments related to the cumulative cost of waivers and municipal variances is clearly beneficial to those applicants

seeking relief from both CMP environmental standards and municipal lot area or density requirements in a Regional Growth Area, Pinelands Village or Pinelands Town, or for cultural housing in any management area. The PDC obligation for such applications would be reduced by 50 percent, from 0.50 PDCs to 0.25 PDCs.

Based upon recent transactions on the private market, it is estimated that each quarter of a PDC (one development right) currently may cost between \$20,000 and \$40,000. The average sales price thus far in 2005 is close to \$30,750 for each development right. Clearly, then, the PDC obligations which result from the Commission's current regulations for waivers and lot area or density variances represent a significant expense for applicants, particularly when they are coupled with a requirement to use an alternate design wastewater treatment system which may cost as much as \$32,000. Cutting the PDC obligation in half will therefore be of significant economic benefit to the limited number of applicants who require relief from both CMP environmental standards and municipal lot area or density requirements in order to develop their properties.

The economic impact of the proposed amendments to the Pilot Program for Alternate Design Wastewater Treatment systems will clearly be positive for those landowners seeking to develop their properties in unsewered areas of the Pinelands Area. The proposed amendments will provide an opportunity for these landowners to develop the number of units authorized in a certified municipal land use ordinance, rather than being limited in terms of the number of alternate design treatment system technologies which may be used on any one parcel. While it could be argued that such landowners in Regional Growth Areas, Pinelands Towns and Pinelands Villages had the ability to do so under current CMP regulations through use of a community on-site treatment system, the approval process for such systems is uncertain at best.

In most cases, a Water Quality Management Plan amendment would be necessary, a process which could require 12 to 18 months or more to complete. The Commission does not believe that it is appropriate to place property owners and applicants in this difficult and cumbersome situation, without providing a feasible alternative, nor was it the Commission's goal or expectation when the Pilot Program was established.

It is possible that the proposed amendments at N.J.A.C. 7:50-5.4(c)6 related to the use of alternate technologies or multiple shorter towers as a means of reducing visual impacts may increase costs for those applicants seeking to construct new local communications facilities in the Pinelands Area. It is anticipated, however, that these amendments will affect very few applications. No matter the ultimate number, the Commission believes it is critical to minimize visual impacts in order to protect the scenic resources of the Pinelands and, further, that the required use of alternate technologies is a reasonable means of accomplishing this objective.

Finally, all Pinelands municipalities will incur costs because of the need to revise their master plans and land use ordinances in order to conform with the proposed amendments, once adopted. The costs of these revisions will be borne by the local governments, although the Commission will continue with its practice of providing model or sample ordinances which municipalities may consider, thereby somewhat offsetting costs. While the adoption of master plans and ordinance amendments represents a cost to municipalities, it is expected to be nominal.

Environmental Impact

The proposed amendments to the criteria for designation of municipal reserves are not expected to have any direct environmental impacts. They should, however, encourage more municipalities to take advantage of this growth management

technique, thereby better enabling such municipalities to plan and prepare for residential growth and its impacts within their jurisdictions.

The proposed amendments related to stormwater management are expected to have significant environmental benefits in that they strengthen standards for recharge, require better management of runoff from high pollutant loading areas, encourage better and more efficient stormwater basin design and the use of nonstructural measures and require that maintenance of stormwater facilities be provided in perpetuity.

In terms of the expansion of the Cape May Landfill, as authorized in the amendments to N.J.A.C. 7:50-6.75(i), a certain negative environmental impact is unavoidable. No structure engineered by man is entirely risk free. However, this particular landfill facility is state of the art and includes numerous safeguards, including a double liner and a sophisticated leachate collection system. It is important to note, as well, that all landfill activities made possible by the proposed amendments will occur on previously disturbed lands within an existing Pinelands Town management area, adjacent to previously approved landfill cells. In addition, the proposed amendments require that the CMCMUA permanently deed restrict approximately 90 acres of its site for conservation purposes. A deed restriction against any further expansion of the landfill will also be required pursuant to proposed N.J.A.C. 7:50-6.75(i)6i.

Positive environmental impacts will also be associated with the proposed amendments related to the Cape May Landfill as they provide for a payment of more than \$4.6 million to the Commission. These funds will be used by the Commission to further the protection of the Pinelands. While not required by the proposed

amendments, it is likely that the acquisition and permanent protection of land within the Pinelands will be one of the primary ways in which this objective is accomplished.

The proposed amendments related to local communications facilities clarify that an applicant must site a new facility, be it an antenna or a new tower, on that existing structure or on that site which would have the least visual impact on a number of important Pinelands resources. In addition, the proposed amendment to N.J.A.C. 7:50-5.4(c)6 provides both the cellular industry and the Commission with the flexibility to propose or require multiple shorter towers as opposed to a single taller structure if this would provide for fewer overall visual impacts. All of these amendments will better protect the scenic resources of the Pinelands.

With respect to the cumulative cost of waivers and municipal variances, it should first be emphasized that the proposed amendments at N.J.A.C. 7:50-5.27(c), 5.28(a)4 and 5.32(b) in no way alter CMP standards for the establishment of extraordinary hardships, one of the tests which must be met in order to qualify for a waiver of strict compliance. Nor do the proposed amendments relax the limitations contained in N.J.A.C. 7:50-4.65 which govern how much relief from CMP standards may be granted by the Commission in its approval of a waiver of strict compliance. Likewise, the proposed amendments do not relieve an applicant from the need to obtain a municipal variance if development is proposed on a lot which does not meet the lot area or density requirements established in a municipal land use ordinance. The proposed amendments merely eliminate the need for purchase of PDCs in association with municipal lot area or density variances in cases where a waiver of strict compliance is also required. Reduction in PDC purchase requirements will mean that less land in the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area will be provided with permanent protection.

Between 1999 and July, 2005, the Commission approved a total of four waivers of strict compliance in a Regional Growth Area, Pinelands Village or Pinelands Town involving lots in unsewered areas for which municipal variances from lot area or density requirements were also necessary. One such waiver was approved for an application submitted under the cultural housing standards of the CMP. Each of these applications required the purchase and redemption of 0.50 PDCs and under current regulations would have required the use of an alternate design wastewater treatment system, for a total cost in excess of \$90,000 per application. The proposed amendments would reduce the PDC requirement for applications such as these to 0.25 for each application. Had the proposed amendments been in place beginning in 1999, the result would have been a requirement to purchase 1.25 fewer PDCs which in turn would have meant the permanent protection of 40 to 50 fewer acres of land in the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area. For comparison purposes, over 23,000 acres were permanently protected through the PDC program during this time period (1999 to July, 2005).

While the permanent protection of these important forested and agricultural lands is certainly of benefit to the environment, the Commission believes that it is just as important to strike an appropriate balance between the relief being granted for certain applications and the cost this entails for applicants due to the number of PDCs which must be redeemed. Reducing PDC obligations from 0.50 to 0.25 will result in the preservation of less land, but the impact will be minimal given the very small number of affected applications the Commission anticipates receiving over time. The Commission did consider including in the amendments a limitation on the number of times any one person could take advantage of the reduced PDC obligation. Limiting the applicability of the provision to those persons who have owned their properties

since February of 1979 was also contemplated. Ultimately, however, the Commission determined that these restrictions were unnecessary, given what is projected to be an extremely limited number of affected applications over time. In addition, it should be noted that for those affected applications submitted under the cultural housing provisions of the CMP, limitations as to ownership and frequency of development are already in place pursuant to N.J.A.C. 7:50-5.32. The only other situations where the proposed amendment would apply involve undersized lots in Regional Growth Areas, Pinelands Villages and Pinelands Towns, areas targeted for development by the CMP.

Recognizing that past application history is not a perfect indicator of the type and number of applications which the Commission will receive in the future, the Commission intends to monitor the use of these amended provisions over time. Commission staff will be asked to provide the Commission with periodic reports. Should the Commission determine that the reduced PDC obligation associated with this particular type of application is being taken advantage of much more frequently than is anticipated today, additional amendments or limitations on the applicability of these provisions may be considered.

The proposed amendment to N.J.A.C. 7:50-10.22(a)6i which provides an opportunity for more than 10 of any particular alternate design wastewater treatment system technology to be installed on a single parcel is expected to have little, if any, environmental impact. In part this is due to the fact that the five alternate design treatment systems identified in the Commission's pilot program would not have been authorized for use in the Pinelands had the Commission not fully expected them to be capable of meeting the water quality standards of the CMP. It is also unlikely that, during the remaining duration of the Pilot Program, the Commission will receive more than one or two applications for residential development which would be affected by

the proposed amendment (those which propose the use of alternate design treatment systems for more than 40 or 50 individual residential units). To the extent that any such projects are proposed and the additional treatment systems are authorized, this may provide an environmental benefit in that the installation of additional systems will result in more monitoring and testing of effluent. This would ultimately provide the Commission with more data to be evaluated as part of the pilot program, something which is of increasing importance as the August 5, 2007 deadline for installation of the alternate design

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by establishing revising standards for the establishment of municipal reserves in order to make this a more useful tool for managing growth and providing for enhanced stormwater management.

With respect to stormwater management, the Federal Clean Water Act (33 U.S.C. §§ 251 et seq.) regulates stormwater runoff and nonpoint source pollution control. The Federal Clean Water Act requires permits under Section 402 of that Act (33 U.S.C. §1342) for certain stormwater discharges. Section 319 of the Clean Water

Act (33 U.S.C. § 1329) authorizes a Federal grant-in-aid program to encourage states to control nonpoint sources. The Commission's existing and proposed regulations are design to control stormwater and minimize nonpoint source pollution and are fully consistent with the Federal requirements.

The proposed amendments related to local communications facilities relate to a topic for which the Federal government also has regulations. However, Federal regulations do not deal specifically with the siting of local communications facilities in terms of zoning or other land use designations. The Federal regulations do seek to foster a climate in which cellular service can succeed. The proposed amendments to N.J.A.C. 7:50-5.4(c) are designed to achieve that goal as well, in a manner which minimizes impacts on the scenic resources of the Pinelands.

There are no other Federal requirements which apply to the subject matter of these amendments.

Jobs Impact

The proposed amendments are not expected to have cause the loss of any jobs if adopted. Existing jobs may be retained as a result of the amendments being proposed at N.J.A.C. 7:50-6.75(i) which would authorize the continued operation and expansion of the Cape May Landfill. Overall, however, the proposed amendments will have a negligible effect on the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments are expected to have minimal impacts on the agriculture industry.

As discussed above with respect to environmental impacts, the proposed amendments related to the cumulative cost of waivers and municipal variances will reduce PDC obligations for a very limited number of projects in the Pinelands Area. Purchase and redemption of PDCs provides permanent protection to lands in the Preservation Area District, Special Agricultural Production Area and Agricultural Production Area. Therefore, by reducing PDC obligations, there is the possibility that less land in these sensitive management areas, including actively farmed land, will be permanently conserved. However, given the very small number of applications which the Commission receives each year that would be affected, only a minor impact is anticipated.

None of the other proposed amendments are expected to affect agriculture in the Pinelands.

Regulatory Flexibility Statement

Most businesses in the Pinelands may be characterized as small in size and employment compared to the remainder of New Jersey. However, the proposed amendments do not differentiate by size of business and thus impact on all businesses equally.

New reporting and compliance requirements may be imposed on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by the proposed amendments related to stormwater management. Small businesses proposing major development in the Pinelands Area may be required to

utilize additional best management practices for stormwater control. Additional costs that may be incurred could include the need to hire professional consultants such as engineers. Small businesses may also be impacted by the required maintenance of any stormwater facilities on their properties. The proposed amendments also require that the results of post-development field permeability tests and as-built plans be submitted to the engineer of the municipality in which the development is located. The Commission has balanced the costs imposed on small businesses by the proposed amendments against the environmental benefits to be achieved by the new stormwater management requirements and determined that it would be inappropriate to exempt small businesses from these requirements. It is noted that the costs that may be incurred by small businesses are generally equivalent to those that may be incurred by individuals and homeowners.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Commission has evaluated the proposed amendments which are the subject of this rulemaking effort to determine the nature and extent of their impact on smart growth and implementation of the State Plan.

The proposed amendments to the CMP's municipal reserve criteria should encourage Regional Growth Area municipalities to take advantage of this growth management tool. While the concept of reserve areas is not something the State Plan specifically authorizes or defines as a smart growth technique, providing

municipalities with the opportunity to plan and coordinate the provision of infrastructure in areas slated for intensive development, before that development occurs, is certainly consistent with any definition of smart growth. The proposed amendments authorizing the continuation and expansion of the Cape May Landfill will provide for the efficient use of existing public facilities, an important component of any smart growth strategy.

No other smart growth impacts are anticipated from the proposed amendments.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Full text of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [thus]):

7:50-3.39 Standards for certification of municipal master plans and land use ordinances

- (a) Municipal master plans and land use ordinances, and any parts thereof, shall be certified only if:
1. (No change.)
 2. They include provisions which:
 - i.-v. (No change.)
 - vi. Implement Pinelands management area and zoning district boundaries in a manner which provides consistent treatment of

similarly situated lands and considers the suitability of lands for their assigned management area and zoning district designations as they relate to the standards and objectives of this Plan; [and]

vii. Enable permitted densities in each Regional Growth Area zoning district in which residential development is permitted to be reasonably achieved in most cases[.]; and

viii. Establish and implement a mitigation plan as part of any municipal stormwater management plan and ordinance adopted in accordance with N.J.A.C. 7:8-4.2(c)11 which:

(1) Identifies those measures necessary to offset the granting of exceptions to the standards set forth in N.J.A.C. 7:50-6.84(a)6i through v;

(2) Specifies that exceptions to the standards set forth in N.J.A.C. 7:50-6.84(a)6i through v will be considered only in cases where an applicant is able to demonstrate that such standards cannot be met on a particular parcel or where the municipality determines that stormwater management would more effectively be achieved through alternative measures;

(3) Requires that any off-site mitigation measures identified pursuant to (a)2ix(1) above occur within the Pinelands Area and within the same drainage area as the parcel proposed for development;

- (4) Allows for monetary contributions to be made to the municipality in lieu of performing the off-mitigation measures identified pursuant to (a)2ix(1) above, with the amount of any such in-lieu contribution being equivalent to the cost of implementing and maintaining the stormwater management measures for which an exception is granted; and
- (5) Requires that the municipality expend any contributions collected pursuant to (a)2ix(4) above within five years of their receipt.

7:50-4.2 Pre-application conference; application requirements

- (a) (No change.)
- (b) Application requirements.
 - 1.-4. (No change.)
 - 5. Application for approval of major development: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for approval of major development, except for forestry and resource extraction operations, shall include at least the following information:
 - i.-ix. (No change.)
 - x. A stormwater management facilities map, at the same size and scale as the project site base map, showing existing topography at minimum one foot contour intervals, storm water drainage patterns and calculations and the applicant's

proposed [storm water run-off management] plan to manage stormwater, which shall contain results of all [percolation] permeability tests and soil [borings] test pit logs performed in each recharge area including the estimated seasonal high water table. Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention (if applicable) and emergency spillway provisions with the maximum discharge capacity of each spillway shall also be provided. In addition, a land use planning and source control plan shall be submitted, demonstrating how development of the parcel will comply with the standards of N.J.A.C. 7:50-6.84(a)6 through use of nonstructural techniques and source controls to the maximum extent practical. A detailed narrative and associated illustrative maps and/or plans which specifically address the nine nonstructural strategies for stormwater management identified in N.J.A.C. 7:8-5.3 must be included;

xi.-xv. (No change.)

6.-9. (No change.)

(c) (No change.)

7:50-5.4 Height limitations

(a)-(b) (No change.)

(c) The height limitation in (a) above shall not apply to the antenna and any supporting structure of a local communication facility of greater than 35 feet, provided that:

1.-2. (No change).

3. The antenna utilizes an existing communications or other suitable structure, to the extent practicable. Should there be more than one such existing communications or other suitable structure available for use, the antenna shall utilize that structure which offers the least potential for visual impacts on those uses and resources listed in 4.ii. through v. below;

4. If an existing communications or other suitable structure cannot be utilized, the antenna and any necessary supporting structure is located such that it:

i.-iv. (No change.)

v. Minimizes visual impacts as viewed from existing residential dwellings located on contiguous parcels through adherence to the buffer and setback requirements established in the certified land use ordinances of the municipality in which the facility is proposed to be located; [and]

vi. If proposed in the Preservation Area District, Forest Area, Special Agricultural Production Area, or Rural Development Area, is located in one of the following areas:

(1) In a certified municipal commercial or industrial zone[, including a mixed use zone which permits a variety of non-residential uses]. If the facility is proposed in the

Rural Development Area, it may also be located on the parcel of an existing commercial or industrial use, whether or not that use is included in a certified municipal commercial or industrial zone. If the facility is proposed in an industrial zone within the Forest Area or Preservation Area District where resource extraction is the primary permitted use, the facility shall be located on the parcel of an approved resource extraction operation in accordance with (c)4vi(3) below;

(2)-(5) (No change.)

vii. Should there be more than one location which meets the requirements set forth in 4i. through vi. above, the antenna and any necessary supporting structure shall be sited at that location which will have the least visual impact on those uses and resources described in 4ii, iii. and v. above.

5. (No change.)

6. If the facility is proposed to be located in any Pinelands management area other than a Regional Growth Area or a Pinelands Town, a comprehensive plan for the entire Pinelands Area must be submitted to the Pinelands Commission for certification. If the facility is proposed to be located in a Military and Federal Installation Area, submission of such a plan shall only be required if the facility is to be located outside the substantially developed area of the installation. Said plan shall include five and 10 year horizons, a review of

alternative technologies that may become available for use in the near future, and the approximate location of all proposed facilities. Said plan shall also demonstrate that the facilities to be located in the Preservation Area District, Forest Area, Special Agricultural Production Area and Pinelands Villages of Bamber Lake, Beckerville, Belcoville, Belleplain, Brookville, Chatsworth, Dorothy, Eldora, Elwood, Estell Manor, Green Bank, Jenkins, Lower Bank, North Dennis, Sweetwater, Warren Grove and Weekstown are the least number necessary to provide adequate service, taking into consideration the location of facilities outside the Pinelands that may influence the number and location of facilities needed within the Pinelands. Said plan shall also demonstrate likely consistency with (c)1, [and] 3, and 4 above and [either demonstrate, or] note the need to demonstrate[,] consistency with (c)2, 3, 4 and 5 when the actual siting of facilities is proposed when an application for development is submitted to the Commission pursuant to N.J.A.C. 7:50-4. If a proposed new facility cannot be sited in accordance with the requirements of 4vi above or the minimum environmental standards established in N.J.A.C. 7:50-6, or if a proposed new facility would have a significant visual impact on those uses and resources described in 4ii. through v. above, the plan shall specify how the use of multiple shorter facilities or alternate technologies could result in reduced visual impacts. The Commission may require the use of multiple shorter facilities or alternate technologies during its review of any application for development submitted pursuant to N.J.A.C. 7:50-4. Where more than one entity

is providing the same type of service or has a franchise for the area in question, the plan shall be agreed to and submitted jointly by all such providers, where feasible, and shall provide for the joint construction and use of the least number of facilities that will provide adequate service by all providers for the local communication system intended. Shared service between entities, unless precluded by Federal law or regulation, shall be part of the plan when such shared services will reduce the number of facilities to be otherwise developed.

i.-iv. (No change.)

v. Applicants may propose amendments to an approved plan from time to time. Any such amendments shall be [agreed to and submitted jointly by] sent by the applicant via certified mail to all of the local communications providers who provide the same type of service or have a franchise within the Pinelands Area for their review and comment. Operators with newly awarded franchises that did not participate in the development of the original plan shall be given the opportunity to participate in the proposal of amendments. In the event that any provider declines to participate in the amendment process, the Commission may proceed with its review of the amendment. The Commission may consider in its review of the amendment any information submitted by other local communications providers. All amendments shall be reviewed by the Commission according to the requirements set forth in

(c)6 above and according to the procedures set forth in (c)6i through iii above.

7. (No change.)

(d) (No change.)

7:50-5.27 Minimum standards governing the distribution and intensity of development and land use in Pinelands Villages and Towns

(a)-(b) (No change.)

(c) Any local approval, including [municipal] variances, [approval] which grants relief from density or lot area requirements for a residential or principal non-residential use shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that otherwise permitted [without the variance], unless a Waiver of Strict Compliance for the dwelling unit or lot has been approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, Part V.. [This] The requirement for use of Pinelands Development Credits shall not apply to use variances which authorize development on lots which conform to the area requirements for principal uses normally permitted in the zone.

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use not otherwise limited pursuant to N.J.A.C. 7:50-6 may be permitted in a Regional Growth Area, provided that:

1.-3. (No change.)

4. Any local approval, including [municipal] variances, [approval] which grants relief from density or lot area requirements shall require that Pinelands Development Credits be used for all dwelling units or lots in excess of that otherwise permitted [without the variance], unless a Waiver of Strict Compliance for the dwelling unit or lot has been approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, Part V.

5.-8 (No change.)

(b) (No change.)

7:50-5.32 Special provisions for cultural housing

(a) (No change.)

(b) Residential dwelling units on [a] lots smaller than 3.2 acres existing as of February 8, 1979 or created as a result of an approval granted by the Pinelands Development Review Board or by the Pinelands Commission pursuant to the Interim Rules and Regulations prior to January 14, 1981 which otherwise meets the standards of (a) above may be permitted by a municipality within any management area provided that:

1.-2. (No change.)

3. Unless a Waiver of Strict Compliance for the dwelling unit or lot has been approved by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, Part V, [The] the applicant acquires and redeems 0.25 Pinelands Development Credits in addition to the reduction in the Pinelands Development Credit allocation that will result from the

development of the dwelling unit pursuant to N.J.A.C. 7:50-5.43(b)3;
and

4. (No change.)

7:50-5.62 Designation of Municipal Reserve Areas

- (a) (No change.)
- (b) A municipality may, in its master plan and land use ordinance, designate lands in a Regional Growth Area as Municipal Reserve Areas, provided that sufficient vacant, developable land remains in the municipality's Regional Growth Area and other portions of the municipality to meet the growth needs of the [county and the] municipality projected for the next [five] six years as determined or approved by the county in which the municipality is located, as well as by the Pinelands Commission[, and the]. Each area designated shall:
 1. Encompass at least 50 contiguous acres which are predominantly vacant;
 2. Include parcels in their entirety;
 3. Exclude areas predominantly comprised of parcels under 10 acres in size;
 4. Exclude lands predominantly comprised of wetlands as defined in N.J.A.C. 7:50-6, Part I;
 5. Exclude lands currently served by sanitary sewer or planned for sanitary sewer service in the near future, as demonstrated by the submission of applications to the Commission for the installation of sanitary sewer or the municipal adoption of a capital budget for installation of sewer service within the area; and

6. Be designated as a Rural Development Area.

- [1. Does not have available and is not planned for sewer service and other essential public services in the next five years;
- 2. Has a relatively uniform boundary which conforms to physical or environmental features;
- 3. Is contiguous to areas designated for less intense development or is not in close proximity to currently developing areas; and
- 4. Is designated as, and zoned in accordance with the requirements for, Rural Development Areas.]

(c) A municipality that designates a municipal reserve area in accordance with (b) above shall prepare and submit to the Commission a plan which assesses the need for sewer service, other public service infrastructure and capital improvements within the reserve area and indicates how and when such services and improvements will be provided. Should said plan indicate that sewer service, other public service infrastructure or capital improvements will be necessary during the six-year duration of the reserve area, a Capital Improvements Program shall be prepared and adopted by the municipality in accordance with N.J.S.A. 40:55D-29 and 30 and submitted to the Commission for its review.

7:50-5.63 Development in Municipal Reserve Areas

- (a) (No change.)
- (b) A municipal master plan and land use ordinance that designate areas in a Regional Growth Area as [a] Municipal Reserve [Area] Areas shall include provisions ensuring that:
 - 1. Residential development within the reserve area is permitted at a maximum gross density of one unit per 10 acres and:
 - i. Is clustered on lots of one acre in size, with the remainder of the parcel not assigned to individual residential lots reserved through recordation of a restriction on the deed to the parcel to accommodate future development at Regional Growth Area densities following expiration of the Municipal Reserve Area designation;
 - ii. Utilizes those alternate design wastewater treatment systems authorized pursuant to N.J.A.C. 7:50-6.84(a)5 or 7:50-10, Part IV; and
 - iii. Is designed so as to facilitate access to other parts of the parcel that may be developed in the future at Regional Growth Area densities following expiration of the Municipal Reserve Area designation.
 - 2. One-quarter of a Pinelands Development Credit is purchased and redeemed for each residential unit developed in the reserve area;
 - 3. Any development transfer program established for the reserve area pursuant to N.J.A.C. 7:50-5.30 provides only for the development of

existing undersized lots. Any parcel whose acreage is to be utilized to meet the density requirement established in (b)1 above but which will not be developed shall be located within the reserve area and shall be reserved through recordation of a restriction on the deed to the parcel to accommodate future development at Regional Growth Area densities following expiration of the Municipal Reserve Area designation. Development on the existing undersized lot shall be designed in accordance with the requirements of (b)1iii above; and

[1]4. [d]Development of [the] each reserve area at Regional Growth Area densities will automatically be permitted within a period of [five] six years. A municipality may demonstrate that such development should be further delayed because [one of the following conditions is met:] the reserve area continues to meet all of the criteria for designation set forth in 7:50-5.62(b) and capital improvements within the reserve area are not needed pursuant to 7:50-5.62(c).

1. Adjacent developable land in the Regional Growth Area has not yet been substantially developed in accordance with the land use and management programs provided in this Plan;
2. All sewer service and other essential public services are not yet reasonably available; or
3. The amount of vacant developable land in all other Regional Growth Areas in the municipality is sufficient to meet the growth needs of the county and the municipality projected for the next five years as determined or approved by the county in which the reserve is located, as well as by the Pinelands Commission]

7:50-6.75 Landfills

(a)-(h) (No change.)

(i) Subject to the procedural and substantive requirements of this Plan, the landfill operated by the Cape May County Municipal Utilities Authority that was authorized to stay in operation after August 8, 1990 as a result of waivers of strict compliance previously approved by the Pinelands Commission pursuant to the provisions of this Plan may continue in operation provided that:

1. All landfilling is located within the Pinelands Town management area on approximately 167 acres of land owned by the Cape May County Municipal Utilities Authority as of (the effective date of these rules), north of a line running parallel approximately 900 feet south of the boundary between Upper Township and Woodbine Borough;
2. All landfilling occurs in the following areas:
 - i. [at] At the previously approved cells 1A, 1B and 1C and on up to 42 acres of land which are contiguous with those existing cells [until the permitted capacity of those areas is reached], totaling approximately 93 acres; and
 - ii. On an additional 74 acres of land located northeast and southeast of the areas identified in 2i above.
3. The height of all existing cells [1A, 1B and 1C] may be increased beyond the currently permitted elevations subject to the approval of the Department of Environmental Protection. The height of any future

cells [located in the 42 acre area] shall be as approved by the Department of Environmental Protection;

4-5. (No change.)

6. Prior to [May 1, 1996] (the effective date of these rules), the Cape May County Municipal Utilities Authority shall impose a permanent deed restriction on all lands owned by it in the Pinelands Area as of [April 1, 1996] (the effective date of these rules). [Said deed restriction shall prohibit any landfilling on said lands except for the areas authorized for landfilling pursuant to i(2) above and except as may be otherwise specifically authorized pursuant to the provisions of this Plan.] Said deed restriction shall be specifically enforceable by the Pinelands Commission and shall[.]:

- i. Prohibit any landfilling on lands owned by the Cape May County Municipal Utilities Authority in the Pinelands Area as of (the effective date of these rules), except on those lands authorized for landfilling pursuant to (i)2 above; and
- ii. Prohibit any development on those lands owned by the Cape May County Municipal Utilities Authority as of (the effective date of these rules) which are located north of the areas authorized for landfilling pursuant to (i)2 above, consisting of approximately 90 acres.

7. In mitigation for the impacts upon the resources of the Pinelands caused by the landfill expansion and the continued use of the landfill after May 1, 1996[.]:

- i. [a] A payment of \$2.04 per ton of waste disposed in the landfill after May 1, 1996 shall be made to the Pinelands Commission by the operator of the landfill. Said payments shall be made until \$2.25 million has been paid to the Pinelands Commission. Said payments shall be made quarterly within 45 days of the end of any quarter, with the first quarter ending on August 1, 1996. As an alternative to said quarterly payments, the Cape May County Municipal Utilities Authority and the Pinelands Commission may agree to the Authority's making a present value payment to the Pinelands Commission of the equivalent, based upon an agreed upon formula, to the \$2.25 million paid quarterly as set forth above. Any such present value payment shall be made prior to May 1, 1996; [and]
- ii. A present value payment of \$4,651,045 as of December 31, 2004 shall be made to the Pinelands Commission by the operator of the landfill based upon the projected landfilling capacity or tonnage gained as a result of the expansion permitted pursuant to (i)2ii above and one-half of the escalated host community benefit. Said payment shall be prior to (the effective date of these rules); and
- iii. Should the total tonnage of solid waste materials landfilled during any five-year increment exceed the projections for that period upon which the required payment in 7ii was based, a payment shall be made to the Pinelands Commission of the

difference between the number of tons received and the number of tons originally projected, multiplied by one-half of then prevailing host community benefit paid to Upper Township and the Borough of Woodbine by the operator of the landfill. Such payment shall be in the form of a lump sum amount to be paid to the Commission by the operator of the landfill prior to April 30th of the first year immediately following the completion of each five year incremental calculation period. This analysis shall be conducted beginning five years from (the effective date of these rules) and continue until 2034. In the event that an Act of God, including but not limited to floods and or hurricane category winds, cause the total tons landfilled to exceed the projected amount, the Commission may determine that all or a portion of the excess tonnage payment is unnecessary for a particular year.

8. Use of funds:

- i. Funds transmitted to the Commission pursuant to (i)7i above shall be used solely for the acquisition of conservation and recreation lands throughout the Pinelands National Reserve. The Commission shall devote at least eight percent of those funds to purchases in Cape May County. The Commission, where practicable, will seek matching funds for the funds used for acquisition in Cape May County.
- ii. To the extent that the Commission elects to use any portion of the funds transmitted to the Commission pursuant to (i)7ii or

iii above for the acquisition of conservation and recreation lands in the Pinelands National Reserve, the Commission shall devote at least eight percent of the funds to be used for acquisition to purchases in Cape May County.

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1.-5. (No change.)

6. Surface water runoff[, provided that] in accordance with N.J.A.C. 7:8, subchapters 5 and 6, as amended, except as modified and supplemented pursuant to the following:

i. Runoff rate and volume, runoff quality and groundwater recharge methodologies:

(1) Runoff rates and volumes shall be calculated in accordance with the USDA Natural Resources Conservation Service (NRCS) Runoff Equation, Runoff Curve Numbers, and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Part 630 – Hydrology and Technical Release 55 – Urban Hydrology for Small Watersheds, as amended. Alternative methods of calculation may be utilized, provided such alternative methods are at least as protective as the NRCS methodology when considered on a regional stormwater management area basis;

- (2) Stormwater runoff shall be calculated using NRCS methodology by separately calculating and then combining the runoff volumes from pervious and directly connected impervious surfaces within each drainage area within the parcel;
- (3) Calculations of stormwater runoff from unconnected impervious surfaces shall be based, as applicable, upon the Two-Step Method described in the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended, or the NRCS methodology; and
- (4) In calculating stormwater runoff using the NRCS methodology, the appropriate 24-hour rainfall depths as developed for the parcel by the National Oceanic and Atmospheric Administration shall be utilized.

ii. Runoff shall meet the requirements in (4) and (5) below and one of (1), (2) or (3) below:

- (1) The post-development stormwater runoff hydrographs generated from the parcel by a two year, 10 year and 100 year storm, each of a 24 hour duration, shall not exceed, at any point in time, the parcel's pre-development runoff hydrographs for the same storms;
or
- (2) Under post-development site conditions:

- (A) There shall be no increase in pre-development stormwater runoff rates from the parcel for the two year, 10 year and 100 year storm; and
 - (B) Any increased stormwater runoff volume or change in stormwater runoff timing for the two year, 10 year and 100 year storms shall not increase flood damage at or downstream of the parcel. When performing this analysis for the pre-development site conditions, all off-site development levels shall reflect existing conditions. When performing this analysis for post-development site conditions, all off-site development levels shall reflect full development potential in accordance with those municipal land use ordinances certified by the Commission pursuant to N.J.A.C. 7:50-3; or
- (3) The peak post-development stormwater runoff rates for the parcel for the two year, 10 year and 100 year storms shall be 50, 75 and 80 percent, respectively, of the parcel's peak pre-development stormwater rates for the same storms. Peak outflow rates from onsite stormwater measures for these storms shall be adjusted where necessary to account for the discharge of increased stormwater runoff rates and/or volumes

from areas of the parcel not controlled by onsite measures. These percentages need not be applied to those portions of the parcel that are not proposed for development at the time an application is submitted to the Commission pursuant to N.J.A.C. 7:50-4, provided that:

- (A) Such areas have been permanently protected from future development by conservation easement, deed restriction, or other acceptable legal measures; or
- (B) A deed notice has been filed stating that such areas will be subject to the standards of this section at the point in time they are proposed for development in the future; and
- (4) There shall be no direct discharge of stormwater runoff from any point or nonpoint source to any surface waterbody. In addition, stormwater runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel; and
- (5) To the maximum extent practical, there shall be no direct discharge of stormwater runoff onto farm fields so as to protect farm crops from damage due to

flooding, erosion, and long term saturation of cultivated crops and cropland.

iii. Recharge standards:

(1) For all major developments, the total runoff volume generated from the net increase in impervious surfaces by a ten (10) year, twenty-four (24) hour storm shall be retained and infiltrated onsite;

(2) In high pollutant loading areas (HPLA) and areas where stormwater runoff is exposed to source material, the following additional water quality standards shall apply:

(A) The areal extent and amount of precipitation falling directly on or flowing over HPLAs and areas where stormwater is exposed to source material shall be minimized through the use of roof covers, canopies, curbing or other physical means to the maximum extent practical in order to minimize the quantity of stormwater generated from HPLA areas;

(B) The stormwater runoff originating from HPLAs and areas where stormwater runoff is exposed to source material shall be segregated and prohibited from co-mingling with stormwater runoff originating from the remainder of the parcel;

(C) The stormwater runoff from HPLAs and areas where stormwater runoff is exposed to source material shall be subject to pretreatment to achieve 90 percent removal of total suspended solids from the water quality design storm established in N.J.A.C. 7:8-5.5(a) prior to infiltration, using one or more of the following measures, designed in accordance with the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended:

- (I) Bioretention system;
- (II) Sand filter;
- (III) Wet pond designed to achieve a minimum 80 percent removal of total suspended solids;
- (IV) Constructed stormwater wetland; and
- (V) Other measures certified by the Department of Environmental Protection, including a Media Filtration System manufactured treatment device with a minimum 80 percent removal of total suspended solids as verified by the New Jersey

Corporation for Advanced
Technology.

- (D) If the potential for contamination of stormwater runoff by petroleum products exists onsite, prior to being conveyed to the pretreatment facility required in (a)6iii(2)(C) above, the stormwater runoff from the HPLAs and areas where stormwater runoff is exposed to source material shall be conveyed through an oil/grease separator or other equivalent manufactured filtering device providing for the removal of petroleum hydrocarbons.

iv. Infiltration basin design, siting and construction standards:

- (1) Stormwater infiltration facilities shall be designed, constructed and maintained to provide a minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration facility and the seasonal high water table;
- (2) Stormwater infiltration facilities shall be sited in suitable soils verified by field testing to have permeability rates between one and 20 inches per hour. A factor of safety of two shall be applied to the soil's field-tested permeability rate in determining the infiltration facility's design permeability rate. If such soils do not exist on the parcel proposed for

development or if it is demonstrated that it is not practical for engineering, environmental or safety reasons to site the stormwater infiltration basin(s) in such soils, the stormwater infiltration basin(s) may be sited in soils verified by field testing to have permeability rates in excess of 20 inches per hour, provided that stormwater is routed through a bioretention system prior to infiltration. Said bioretention system shall be designed, installed and maintained in accordance with the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended;

- (3) Groundwater mounding analysis shall be required for purposes of assessing the hydraulic impacts of mounding of the water table resulting from infiltration of stormwater runoff from the maximum storm designed for infiltration. The mounding analysis shall provide details and supporting documentation on the methodology used. Groundwater mounds shall not cause stormwater or groundwater to breakout to the land surface or cause adverse impacts to adjacent water bodies, wetlands or subsurface structures, including, but not limited to basements and septic

systems. Where the mounding analysis identifies adverse impacts, the infiltration facility shall be redesigned or relocated, as appropriate;

(4) To the maximum extent practical, stormwater management measures on a parcel shall be designed to limit site disturbance, maximize stormwater management efficiencies, maintain or improve aesthetic conditions and incorporate pretreatment as a means of extending the functional life and increasing the pollutant removal capability of structural stormwater management facilities. The use of stormwater management measures that are smaller in size and distributed spatially throughout a parcel, rather than the use of a single larger structural stormwater management measure, shall be required to the maximum extent practical;

(5) To avoid sedimentation that may result in clogging and reduction of infiltration capability and to maintain maximum soil infiltration capacity, the construction of stormwater infiltration basins shall be managed in accordance with the following standards:

(A) No stormwater infiltration basin shall be placed into operation until its drainage area has been completely stabilized. Instead, upstream runoff shall be diverted around the

basin and into separate, temporary stormwater management facilities and sediment basins. Such temporary facilities and basins shall be installed and utilized for stormwater management and sediment control until stabilization is achieved in accordance with N.J.A.C. 2:90, Standards for Soil Erosion and Sediment Control in New Jersey;

(B) If, for engineering, environmental or safety reasons, temporary stormwater management facilities and sediment basins cannot be constructed on the parcel in accordance with (a)6iv(5)(A) above, the stormwater infiltration basin may be placed into operation prior to the complete stabilization of its drainage area provided that the basin's bottom during this period is constructed at a depth at least two feet higher than its final design elevation. When the drainage area has been completely stabilized, all accumulated sediment shall be removed from the infiltration basin, which shall then be excavated to its final design elevation; and

(C) To avoid compacting an infiltration basin's subgrade soils, no heavy equipment such as

backhoes, dump trucks or bulldozers shall be permitted to operate within the footprint of the stormwater infiltration basin. All excavation required to construct a stormwater infiltration basin shall be performed by equipment placed outside the basin. If this is not possible, the soils within the excavated area shall be renovated and tilled after construction is completed. Earthwork associated with stormwater infiltration basin construction, including excavation, grading, cutting or filling, shall not be performed when soil moisture content is above the lower plastic limit.

v. As-built requirements:

- (1) After all construction activities have been completed on the parcel and finished grade has been established in the infiltration basin, replicate post-development field permeability tests shall be conducted to determine if as-built soil permeability rates are consistent with design permeability rates. The results of such tests shall be submitted to the municipal engineer. If the results of the post-development field permeability tests fail to achieve the minimum required design permeability rate, utilizing a factor of safety of two,

the infiltration basin shall be renovated and re-tested until such minimum required permeability rates are achieved; and

- (2) After all construction activities and required field testing have been completed on the parcel, as-built plans, including as-built elevations of all stormwater management measures shall be submitted to the municipal engineer. Based upon the municipal engineer's review of the as-built plans, all corrections or remedial actions deemed by the municipal engineer to be necessary due to the failure to comply with design standards and/or for any reason concerning public health or safety, shall be completed by the applicant. In lieu of review by the municipal engineer, the municipality may engage a licensed professional engineer to review the as-built plans and charge the applicant for all costs associated with such review.

vi. Exceptions:

- (1) The standards set forth in (a)6i through v above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area

in excess of 5,000 square feet within any five year period;

- (2) The use of nonstructural strategies in accordance with N.J.A.C. 7:8-5.3 shall not be required for development which would create less than one acre of disturbance;
- (3) Provided an applicant for major development is able to demonstrate that the standards set forth in (a)6i through v above cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures, strict compliance with said standards may be waived at the discretion of the municipality in which the proposed development is located, provided the municipal stormwater management plan certified by the Commission pursuant to N.J.A.C. 7:50-3 specifies the circumstances under which such alternative measures would be appropriate and identifies those parcels or projects elsewhere in the Pinelands Area where any off-site mitigation would be permitted to occur; and
- (4) Unless specifically included in (a)6vii(1) through (3) above, the exemptions, exceptions, applicability standards and waivers of strict compliance for stormwater management described in N.J.A.C. 7:8 shall not apply.

viii. Maintenance standards:

- (1) Maintenance plans required pursuant to N.J.A.C. 7:8-5.8(a) shall be supplemented so as to include reporting of inspection and repair activities. Said plans shall include accurate and comprehensive drawings of all stormwater management measures on a parcel, including the specific latitude and longitude and block/lot number of each stormwater management measure. Maintenance plans shall specify that an inspection, maintenance and repair report will be updated and submitted annually to the municipality;
- (2) Stormwater management measure easements shall be provided by the property owner as necessary for facility inspections and maintenance and preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities. The purpose of the easement shall be specified in the maintenance agreement; and
- (3) An adequate means of ensuring permanent financing of the inspection, maintenance, repair and replacement plan shall be implemented and shall be detailed in the maintenance plan. Financing methods shall include but not be limited to.

- (A) For private development applications, the provision of maintenance guarantees for the entire stormwater management system;
 - (B) The assumption of the inspection and maintenance program by a municipality, county, public utility or homeowners association; or
 - (C) The required payment of fees to a municipal stormwater fund in an amount equivalent to the cost of both ongoing maintenance activities and necessary structural replacements.
- ix. Unless specifically mandated pursuant to (a)6i through viii above, the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended, may be utilized as a guide in determining the extent to which stormwater management activities and measures meet the standards of (a)6i through viii above.
- [i. The total runoff generated from any net increase in impervious surfaces by a 10 year storm of a 24 hour duration shall be retained and infiltrated on-site. Runoff volumes shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;

- ii. The rates of runoff generated from the parcel by a two year, 10 year and 100 year storm, each of a 24 hour duration, shall not increase as a result of the proposed development. Runoff rates shall be calculated in accordance with the United States Soil Conservation Service Technical Release No. 55, including the definitions, methodologies and guidance contained therein, or the S.C.S. National Engineering Handbook, section 4;
- iii. The standards set forth in (a)6i and ii above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet within any five year period;
- iv. Surface water run-off shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel;
- v. Excessively and somewhat excessively drained soils, as defined by the Soil Conservation Service, should be avoided for recharge of run-off wherever practical;
- vi. A minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration or detention facility and the seasonal high water table is met, or a lessor separation when it is demonstrated that the

separation, either due to soil conditions or when considered in combination with other stormwater management techniques, is adequate to protect ground water quality; and

- vii. For private development applications, a four year maintenance guarantee is provided for the entire stormwater management system by the applicant. In addition, for both private and public development applications, the applicant or other interested party shall fund or otherwise guarantee an inspection and maintenance program for a period of no less than ten years. This may be accomplished by various mechanisms, including but not limited to, the assumption of the inspection and maintenance program by a municipality, county, public utility or homeowners association or other viable mechanisms to achieve the purposes of this section. The program proposed shall identify the entity charged with responsibility for annual inspections and the completion of any necessary maintenance, and the method to finance said program.]

7:50-10.22 General standards

- (a) Alternate design pilot program treatment systems shall be authorized for residential use where the proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3 and provided that the following standards are met:

1.-5. (No change.)

6. Conditions for use of alternate design pilot program treatment systems are as follows:

- i. No more than 10 alternate design pilot program septic systems utilizing the same technology shall be installed in the development of any parcel if those systems are each serving one single family dwelling, except where the Executive Director determines that the use of additional pilot program systems on the parcel would not substantially alter the character of the certified zoning plan of the municipality in which the parcel is located, taking into account existing and planned infrastructure and the role of the parcel in the Pinelands Development Credit program. Should such a determination be made, the additional lots may be serviced, proportionately, by those alternate design pilot program technologies which have been certified by the Executive Director pursuant to N.J.A.C. 7:50-10.22(a)2 and are commercially available for use in the Pinelands; and

ii.-xi. (No change.)

(b) (No change.)